

Appln No. 10/045,995

Amdt date April 4, 2005

Reply to Office action of November 2, 2004

**REMARKS/ARGUMENTS**

Applicant thanks the Examiner for his careful consideration of this application. In response to the above-identified Office action, Applicant amends the application and seeks reconsideration, reexamination and allowance thereof. Applicant is filing concurrently herewith a Request for Continued Examination along with the required fee. In this response, Applicant does not add or cancel any claims. Applicant amends claims 1, 30, and 37. Accordingly, claims 1-15, 28, 30-40 and 43 are pending in the application.

**I. Interview Summary**

Applicant's attorney conducted an interview with the Examiner on March 28, 2005. Clarification was sought from the Examiner on his interpretation of terms in the claims and the application of the cited references in the rejection of the claims. During the interview, the Examiner agreed that if independent claim 1 were amended to clarify that the "guide rail includ[es] a second opposing raceway," then the claim would not be obvious over the cited reference (U.S. Patent No. 5,618,262). Applicant does not believe this proposed amendment alters the scope of the claim.

**II. Double Patenting**

Claims 1-15, 28, 30-40 and 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 7-13, 37-38, 48 and 56-60 of U.S. Patent No. 6,814,710. Applicant submits herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Accordingly, reconsideration and withdrawal of the

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provisional double patenting rejection of these claims are requested.

**III. Objections to the Claims**

Claims 1-15 and 28 stand objected to as including informalities. Applicant has amended claim 1 by removing the phrase "said carriage assembly" and replaced it with the phrase "a carriage assembly." This is not a narrowing amendment. Accordingly, reconsideration and withdrawal of the objection to these claims are requested.

**IV. Claims rejected under 35 USC § 103**

Claims 1, 2, 4-10, 12, 28 and 30-40 stand rejected under 35 USC § 103 as being unpatentable over U.S. Patent No. 5,618,262 issued to Rene (hereinafter "Rene"). Applicant respectfully requests that these rejections be withdrawn.

To establish a *prima facie* case of obviousness, the Examiner must show that the cited references, combined, teach or suggest each of the elements of the claim. In regard to independent claims 1 and 38, these claims, as amended, include the elements of "a guide rail affixed to a support structure, said guide rail including a first raceway having a generally V-shaped cross-section and said guide rail including a second opposing raceway spaced apart from said first raceway." As discussed with the Examiner in the interview conducted on March 28, 2005, the cited reference does not teach these elements of the claims. Applicant has amended the claims to clarify that which Applicant believes was already claimed, and therefore this is not considered to be a narrowing amendment. Thus, the cited reference does not teach or suggest each of the elements of

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claims 1 and 38. Therefore, claim 1 is not obvious over Rene. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 1 and 38 are requested.

In regard to claims 2, 4-10, 12, 28, 39 and 40 these claims depend from independent claims 1 and 38, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 1 and 38, these claims are not obvious over Rene. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

**IV. Claims rejected under 35 USC § 103(a)**

Claims 3, 11, 13, 14, 15 and 30-37 stand rejected under 35 USC § 103(a) as being unpatentable over Rene in view of U.S. Patent No. 6,190,338 issued to Arndt (hereinafter "Arndt"). The Applicant respectfully requests that these rejections be withdrawn.

In regard to claims 3, 11, 13, 14, and 15, these claims depend from independent claim 1 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 1, Rene does not teach or suggest each of the elements of these claims. Arndt does not cure these defects of Rene. The Examiner does not indicate and Applicant has been unable to discern any part of Arndt that teaches "a guide rail affixed to a support structure, said guide rail including a first raceway having a generally V-shaped cross-section and said guide rail including a second opposing raceway spaced apart from said first raceway" as recited in claim 1. Therefore, Rene in view of Arndt does not teach or suggest each

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of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 3, 11, 13, 14 and 15 are requested.

In regard to independent claim 30, this claim, as amended, includes the elements of "said carriage assembly further including the massaging member and the carriage assembly including means for driving said massaging member." Neither Rene nor Arndt teach each of the elements of this claim. Rather, Rene teaches a motor 100 connected to the carriage through a linkage arm 96 and rotating member 98 that provides reciprocating longitudinal movement for the carriage. See Rene column 3, lines 65 through column 4, line 5. This motor 100, linkage arm 96 and rotating member 98 are not part of the carriage 36. Rather, they are mounted on the support member 42 of the frame. Therefore, Rene in view of Arndt does not teach each of the elements of claim 30. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 30 are requested.

Claims 31-37 are dependent from independent claim 30 and incorporate limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 30, these claims are not obvious over Rene in view of Arndt. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

#### **V. Allowable Subject Matter**

Applicant notes with appreciation that the Examiner has previously indicated that claim 43 is allowable over the prior art.

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**VI. Conclusion**

In view of the foregoing, it is believed that all claims now pending, namely claims 1-15, 28, 30-40 and 43 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (626) 795-9900.

Respectfully submitted,

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